

**REMARKS**

Claims 1-4, 6-10, 12 and 14 have been finally rejected as obvious over Downes in view of Metcalf. Downes' panel, elements 4-10, is not linear and vertically extending. It is not below the wheel arch but actually a part thereof. It is well known that, in the automotive art, OEM manufacturers do not easily adapt the products of others outside of the manufacturing company that may improve the product. Applicant's invention can be adapted to a pre-existing vehicle by mounting the same behind a vehicle wheel, and spaced therefrom. This is not shown or suggested in Downes. There are no vertically extending passageways. Claim 13 has been amended to depend from Claim 1.

Thus, the Downes' device comprises a complete wheelguard arrangement which is curved around a wheel and in no way can be considered "generally planar." The normal dictionary definition of "planar" is "flat or level" or "situated in a plane" (see [www.dictionary.reference.com](http://www.dictionary.reference.com)). Thus, the examiner's attempt to call the Downes' device "planar" is clearly flawed. Further, Downes' wheel guard construction actually replaces a standard OEM wheel arch. The wheel guard construction has a forward air ingress mesh and **curved vanes** that cover a substantial circumferential portion of the wheel. In contrast, independent claim 1 has been amended to recite a device comprising a **generally planar** panel that is to be mounted substantially vertically behind a vehicle wheel and spaced therefrom. Applicant submits that Downes does not teach or suggest all of the elements and limitations of claim 1. Therefore independent claim 1 and the claims dependent therefrom are not obvious over Downes in view of Metcalf and are thus patentable under 35 USC §103.

A standard wheel arch that does not have a forward air ingress mesh also does not have the associated ingress of air. Therefore, the air flow characteristics and resulting spray formation and properties in a standard wheel arch **are very different** than the specifically designed wheel guard of Downes. Since air flow within a wheel arch environment is transient, turbulent, and complex, the outcome of any design change is inherently unpredictable. Applicant's claim 1 teaches a device comprising a **generally linear and vertically extending planar** panel that

specifically addresses the air flow characteristics associated with a standard wheel arch. It would not be obvious for one skilled in the art to arrive at the design of Applicant's device without relying on Applicant's teachings.

Furthermore, as described on page 1, lines 17-22 of Applicant's specification,

"it has been found that [the arched wheel guard arrangement of Downes] does not work since, when the vehicle is travelling at speed, air is forced into the upper area of the channels creating a back pressure in the channels by travelling down the pockets which prevents the spray from entering the channels."

Applicant teaches in claim 14, a method, and in claim 1, a device, comprising a **generally linear and vertically extending planar** panel that is **mounted substantially vertically behind a vehicle wheel** and spaced therefrom. By teaching a device that is generally planar and mounted substantially vertically behind the wheel, Applicant eliminates the flow characteristic problem of sprays not entering the channels, which is clearly not obvious and not addressed by Downes.

The fender flaps as taught in Metcalf suppress spray by absorbing the impact energy of the water spray and redirecting the water, as shown in Fig. 2A and 2B. There is no teaching or suggestion of reducing spray with a device that separates air from the pulverized water emissions. Therefore, Metcalf does not take into consideration the air flow characteristics in the wheel arch of a moving vehicle. **Thus combining Downes and Metcalf does not address the specific air flow characteristics and resulting spray formation and properties in a standard wheel arch.** Furthermore, without Applicant's teachings, it would not be obvious to one skilled in the art that combining Downes and Metcalf would overcome the flow characteristic problem associated with the device as taught by Downes.

In his comments at the end of page 3 of his action of December 2, 2009, the examiner introduces the issue of maintenance. The present application does not discuss any maintenance aspects but is directed to a device which is intended to prevent spray from a vehicle. The Metcalf device is clearly intended to be used with conventional wheelguard arrangements in

order to have a controlling effect on spray whilst the Downes device is a complete wheelguard arrangement intended to be used on its own so as to have a controlling effect on spray. The vanes of the Downes arrangement are provided as part of a complete wheelguard having a forward air ingress mesh thereby teaching away from a standard wheelguard for which the Metcalf device is intended to be used.

With regard to the examiner's comments in his action of December 2, 2009, in section 4 (spanning pages 5 and 6), the examiner states that 'generally planar' does not differentiate the present device from that of Downes. We respectfully disagree because the Downes device is clearly curved around the wheel arch and is not generally planar. Claim 1 is therefore structurally distinguished from Downes which is not a generally planar device for use in existing wheel arrangements but is a complete replacement wheelguard which produces different spray flow characteristics compared to standard arrangements and which is intended to control the spray resulting from those different spray flow characteristics. Claim 1 is also structurally distinguished from Metcalf which does not have the passages and pockets specified in the present main claim. The prior art structure of Downes is not capable of being attached to an existing wheelguard arrangement because it is itself a wheelguard and the Metcalf device when attached to an existing wheelguard arrangement does not work in the same way as the present device because it has a clearly different structure apart from being 'generally planar.'

Applicant submits that none of the cited references in any combination teach or suggest all of the elements and limitations of independent claims 1 and 14. Therefore claims 1 and 14, and the claims dependent therefrom, including Claim 13, are not obvious and are therefore patentable under USC §103.


### **Conclusion**

It is respectfully submitted that all of the Examiner's objections have been successfully traversed and that the application is now in order for allowance. It is apparent the examiner is over-simplifying the patentability issue by seeming to suggest that would be obvious to 'shrink' the Downes arrangement down to the size of the Metcalf flap and attach it to a wheel arch. This completely ignores the basic fact that Downes is and is always intended to be a complete wheelguard arrangement having a curved forward mesh and curved vanes which extend around the wheel. It is not for the skilled person, or the examiner, to completely deconstruct the Downes product and therefore negate its entire function as a complete wheelguard. It could also be argued that simple combination of the two prior art teachings would result in the skilled person attaching the Metcalf flap (which is intended to be used with a wheelarch) directly to the bottom of the Downes arrangement (which is itself a wheelarch). Such a combination is clearly not the same as the device being claimed in the present main claim. Accordingly, reconsideration of the application and allowance thereof is courteously solicited.

If the examiner still believes the invention is not unobvious over the prior art, he is respectfully requested to enter this amendment for purposes of appeal. This amendment was not presented earlier since, in the final rejection, the Examiner indicated that applicant had only recited an intended use of the invention without structural differences between the claimed invention and the prior art. Those differences are now in the claims, as amended, and, if entered, would reduce the issues remaining on appeal.

The Director is authorized to charge any additional fee(s) or any underpayment of fee(s), or to credit any overpayments to **Deposit Account Number 50-2638**. Please ensure that Attorney Docket Number 102965-010100 is referred to when charging any payments or credits for this case.

Respectfully submitted,

  
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